

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE
SECRETARY

Nov 20 '95

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In the Matter of

**Policies and Rules Concerning
Children's Television Programming**

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) **MM Docket No. 93-48**

**Revision of Programming Policies
for Television Broadcast Stations**

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**Reply Comments
of the
Office of Communication
United Church of Christ**

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Summary and Acknowledgement

The central issue before the Commission is whether the broadcast industry, as a whole, has voluntarily taken steps to achieve the goal of the Children's Television Act, such that the imposition of more rigorous regulations can be avoided. This NPRM has been extended twice for a total of four months to enable industry to complete a study that would purportedly show that the amount and quality of children's educational and informational programming has substantially increased.

The long awaited study submitted by NAB, however, shows that:

- 1) broadcasters do not understand their obligation to provide programming "specifically designed" to serve the educational and informational needs of children as evidenced from the inclusion of general audience programming in the NAB study; and
- 2) claims that the amount of children's programming has increased are inflated by general audience programming that, in many instances, has no educational or informational value for the child audience.

The Office of Communication, therefore, submits that the Commission must exercise the broad discretion delegated to it by Congress to impose quantitative standards to achieve the goals of the Act. The Commission should rule out any further studies and analyses as five years of data have already shown that marketplace forces and broadcaster discretion are insufficient to achieve the intent of Congress.

In addition, the Commission should consider the results of a survey

conducted by the Office of Communication designed to ascertain the opinion of members of the viewing audience concerning programming offered by broadcasters that have spoken out in opposition to the revision of the Commission's rules. The opinions of the viewing audience are in stark contrast to the claims of broadcasters that they understand the meaning and definition of "FCC-friendly" programming. Adult members of households that reviewed the programming of stations making such claims concluded that:

1) the stations generally provide entertainment programming that has a social or moral message that is not necessarily educational or informational; and

2) the majority of programs considered to have the best educational or informational value are aired during times when children are sleeping.

The results of this survey are consistent with the findings of Dr. Dale Kunkel of the University of California who found that broadcasters still consider programming such as *Yogi Bear*, *America's Funniest Home Videos* and *Biker Mice from Mars* as meeting their CTA obligation.

As regards program sponsorship, the comments of the public broadcasting industry (the Corporation for Public Broadcasting, the Public Broadcasting Service and the American Public Television Stations) totally disregard the need for the child audience to have a choice of quality programming on both commercial and non-commercial stations. Commercial stations reach a larger

audience and the need for improvement in their children's programming has been well-established throughout the record of this proceeding.

Acknowledgement

The Office of Communication acknowledges the volunteer work of the members and friends of the United Church of Christ who devoted the time and energy to make possible the collection of data on the quality of children's programming aired by broadcasters in their community. The Office of Communication commends these volunteers for helping to reduce media violence and advancing the aims of the **Pronouncement by the General Synod XX on Violence in Electronic Media and Film.**

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I. Introduction.

The Office of Communication of the United Church of Christ ("OC/UCC") respectfully submits the following reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released April 7, 1995 (FCC 95-143), concerning enforcement of the Children's Television Act of 1990 ("CTA").

The following statement by the Congressional Caucus for Women's Issues in many ways encapsulates the sentiments of the Office of Communication with the respect to the need for a minimum of 7 hours per week of children's television programming,

Over and over again we have observed that our failure to attend to the

moral and intellectual development of our children has come back to haunt us when they grow up. [The Commission has] an opportunity to affect this cycle, profoundly and positively,, for every child in America for years to come.

Letter from the Congressional Caucus for Women's Issues to Chairmant Reed Hundt, Oct. 23, 1995.

Accordingly, OC/UCC appeals to the Commission to seize the opportunity of this proceeding to achieve the goals of the CTA such that the future generations of America will benefit from the educational and informational potential of broadcast technology.

II. Survey Reveals Opinions of the Viewing Audience in Stark Contrast to Claims of Broadcasters.

Well in advance of the filing deadline for the NPRM over 50 broadcasters submitted comments generally opposing the Commission's proposed revisions to its children's television regulations. Commercial licensees cited purported increases in the amount of educational and informational programming as evidence that the industry as a whole has responded favorably to the Children's Television Act of 1990 (CTA). Most broadcasters stated that they clearly understood the definition of children's television and that the programming aired by their station exemplified a quality of programming that is "FCC friendly".

In response to these statements, OC/UCC asked three households in each of 12 market areas covered by stations which submitted comments in this

proceeding to view all the children's programming offered by the stations during the weeks of October 14 through Nov. 3 and respond to a simple questionnaire. While the sampling size is statistically insignificant as regards the entire broadcast industry, the results are a reliable gauge of what a group of viewers think about the educational and informational value of children's programming aired by the stations that have mounted a campaign to oppose proposed revisions to children's television regulations.¹

A. Broadcasters and Viewers Clearly Disagree About Current Definitions of What Constitutes Core Educational Programming.

Each of the 12 stations monitored in the OC/UCC survey claimed in comments submitted that they either clearly understood the definition of the term "children's programming" and/or that the amount and quality of children's programming has substantially improved since the CTA. Some licensees specifically warranted that the programming aired by their station exemplifies industry-wide advancements in children's programming since the enactment of the CTA and accordingly urged that the Commission not adopt revisions that would result in more rigorous regulations of children's television.

In most instances, program evaluations by members of the viewing

¹. See Exhibit I for a description of the survey methodology and a list of stations surveyed.

audience varied greatly with the assertions made by broadcasters. The households that monitored the children's programming of the 12 stations concluded that: *1) the monitored stations generally provide entertainment programming that has a social or moral message that is not necessarily educational or informational; and 2) the majority of programs considered to have the best educational or informational value are aired during times when children are sleeping.*

Monitors participating in the OC/UCC survey were asked to observe the programming of specific stations for a period of two weeks and to rank the programming according to one of the following categories:

1. entertainment with no social, moral, educational or informational value.
2. primarily entertainment with a social or moral message.
3. *entertainment* the primary goal with education or information the secondary goal.
4. education and information the primary goal with entertainment as a secondary goal.
5. education and information the primary goal and sole purpose.

Based upon the category assigned to individual programs,² a composite

². Monitors assigned each program to one of the five categories which were denoted by the numbers 1 through 5.

category was calculated for each of the 12 stations. This was derived from the average of the category numbers assigned to individual programs.³

The results of the monitors' work (Table 1) show that on average the 12 stations aired children's programming that could be described as "primarily entertainment with a social or moral message."

Table I Program Categories

Call Letters	1	2	3	4	5
KHTV, Houston, TX	X				
KIMA, Yakima, WA.		X			
KOLR, Springfield, MO		X			
KOTA, Rapid City, SD		X			
KPHO, Phoenix, AZ		X			
KTIV, Sioux City, IA			X		
WWBZ, Boston, MA				X	

³. The station composite category was based upon the average of the categories assigned to individual programs. For example, if a station had five children programs that were assigned to categories 1, 3, 2, 3, and 4, respectively, the station composite would be 3 (2.6 rounded off to the nearest whole number).

WGEM, Portland, MA			X		
WKEF, Dayton, OH		X			
WPEC, W. Palm Beach, FL				X	
WWTO, Terre Haute, IN		X			
KKTV, Los Angeles, CA			X		
Average for total		X			

Only two stations - public station WBZ, Boston, and WPEC, West Palm Beach, Fla. - can be said to reflect the Commission's goals for children's programming. Three additional stations appear to have provided programming with education and information as a secondary goal, but eight of the twelve surveyed stations primarily aired entertainment programming with a claimed social or moral message. KHTV, Houston fell even below this minimal attempt to meet the goals of the Children's Television Act.

In addition to assigning each program to an evaluation category, monitors were permitted to write comments about each program. Exhibit II, (see appendix), contains a sampling of the monitors' comments, juxtaposed with the

broadcasters' comments submitted on the record of this proceeding. An example of such comments are:

WKEF — "We feel that we have done more than is necessary to help inform and educate the children of Dayton."

MONITOR (referring to "Biker Mice from Mars") — "Station Manager says they technically consider this children's programming . . . I did not allow my children to watch." (Program categorized as *entertainment with no social, moral, educational or informational value.*)

The results of the survey clearly underscore the fact that members of the viewing audience do not concur with the claim of broadcasters that the interests of the child audience are being served. The following statement by a member of Congress in many ways reflects the comments that were generated by OC/UCC's survey:

In my view, and view of many of the parents I represent, television's failure to serve children is clear. Far too much of what is on TV today is loaded with sex and violence, sends inappropriate and potentially harmful messages to young viewers, and undermines the efforts of many parents who are struggling to instill their values in their children.

Senator Joseph Lieberman, Letter to the Chairman Reed Hundt, October 13, 1995.

OC/UCC submits that the views of the Commission should be guided by the principle that the interests of the viewing audience are paramount over that of broadcasters. As evidenced by OC/UCC's survey, the viewing audience is

not satisfied with the use of the public airwaves with respect to serving the educational and informational needs of children. The failure of marketplace forces and broadcaster discretion to address those needs clearly demonstrates the need for revision of the current regulations.

B. Educational and Informational Programming Tends to be Aired when Children are Sleeping.

Many of the programs found by OC/UCC's survey to have educational and informational value were not aired when children are likely to be watching. For example, the overall programming of WPEC of West Palm Beach, Florida received a composite category of 4 (*education and information the primary goal with entertainment as a secondary goal*). In the opinion of the survey monitors, the station's programming amply satisfied the goals of the CTA.

However, 3 of the 7 programs monitored were aired before 7:00 AM. As one monitor wrote concerning *Madison's Adventures* aired at 6:30 am, "Good and educational - on much too early though."

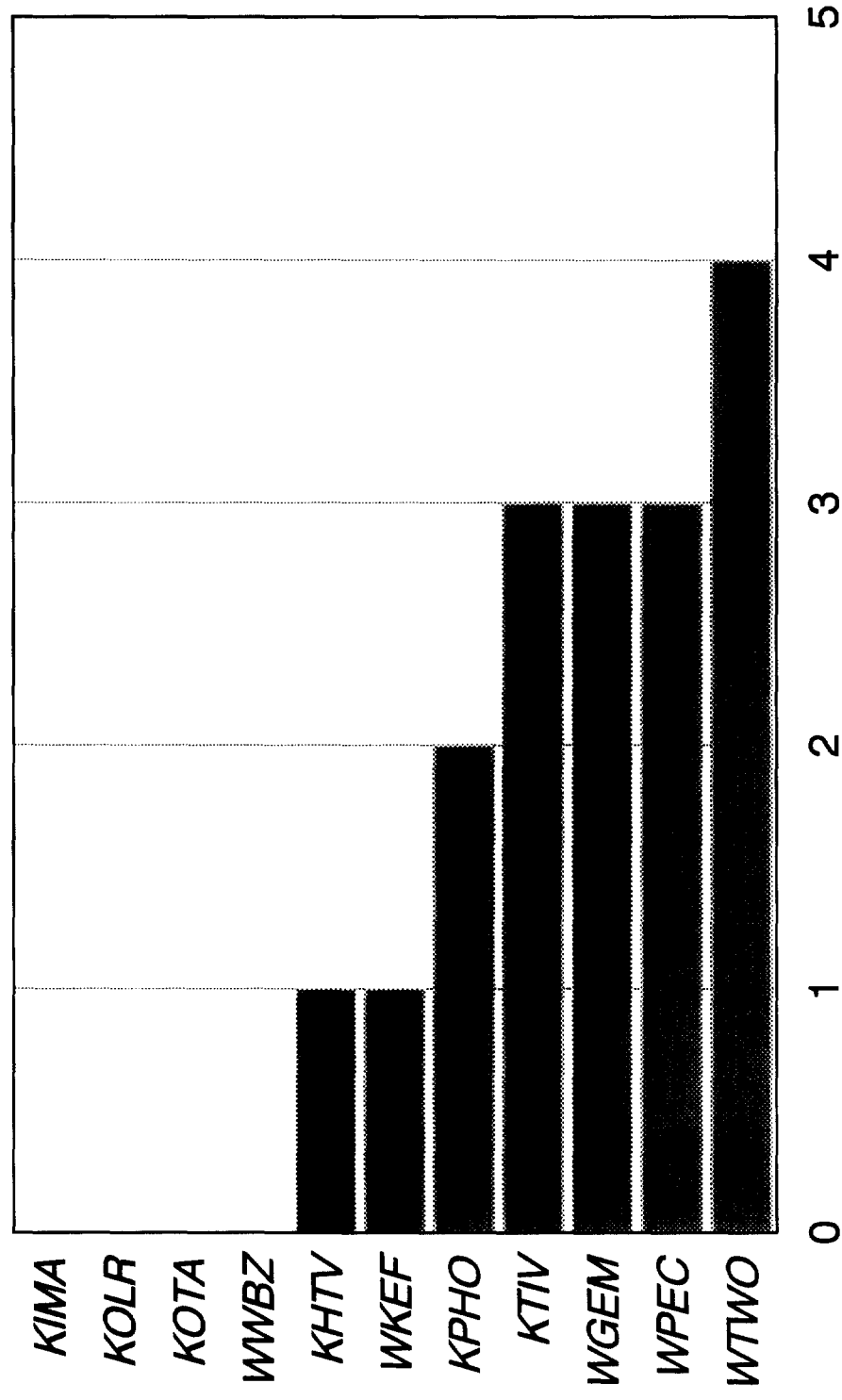
In response to a question about the early morning hours of the station's best children's programming, the station's Program Manager was quoted as saying, " I can't put kid'sTV on in the afternoon because people watch the adult entertainment - soap operas.... If kid's TV was on in the afternoon, I wouldn't

be able to sell advertising."

Overall, the survey revealed that 17, or 20 percent, of the programs monitored were aired before 7:00 am. Chart I provides a list of stations according to number of programs aired before 7:00 am. Thirty and one half percent - nearly one third - of the programs surveyed were aired before 8:00 am.

CHART I

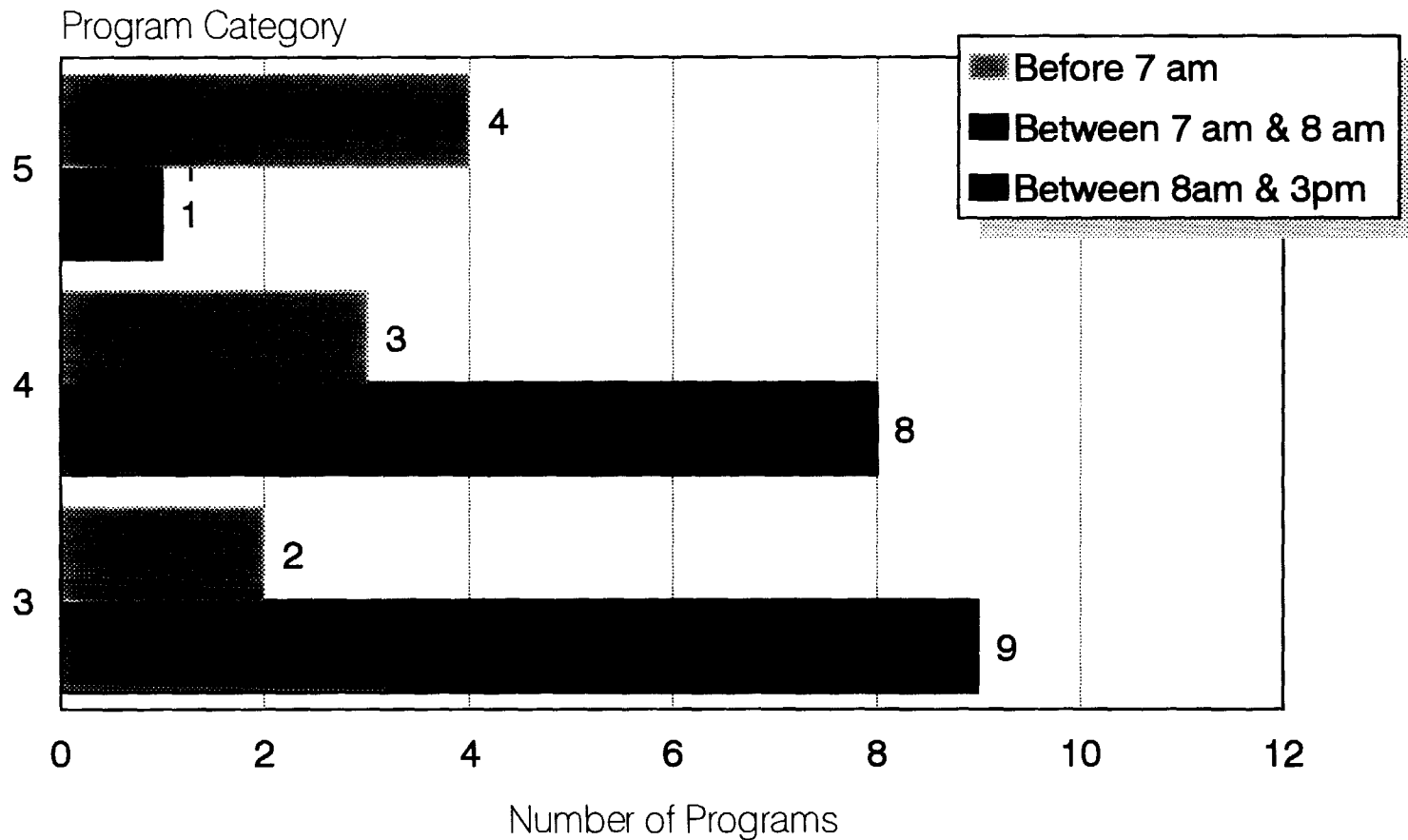
Number of Programs Aired before 7 AM



Moreover, a comparison of the quality of the early morning programs with those scheduled after 7:00 am suggests a positive correlation between early morning programming and programming with the highest evaluation in terms of educational and informational value. Chart II shows that of all of the programs that received a category five rating (*education and information the primary goal and sole purpose*) 4 were aired before 7:00 am compared to 1 between the hours 7:00 am and 8:00 am and 1 between 8:00 am and 3:00 pm. In total, 66 percent of the programs that received the above evaluation (the highest evaluation category) were aired before 7:00 am.

CHART II

Quality of Program According to Air-Time



While broadcasters assert that they will lose advertising revenues if educational and informational programming is scheduled during late afternoon hours, OC/UCC supports the views expressed by some commenters that a level playing field needs to be created such that broadcasters need not be disadvantaged by complying with children's television requirements.⁴ This can only be accomplished if the Commission requires all broadcasters to air "core" children's programming between the hours of 7:00 am and 10:00 pm.

III. NAB's Study Fails to Offer Reliable Evidence of Increased Amounts of Children's Television Programming.

A report prepared by the National Association of Broadcasters concludes that there has been an increase in the amount of educational and informational programming since the adoption of the Children's Television Act and FCC regulations.⁵ According to NAB, the average commercial TV station broadcasts

⁴. *The competitive pressures are so great that one broadcast outlet will not unilaterally arm itself with educational programming and risk giving ground to a rival. So the only real solution seem to be to guarantee a level playing field and ensure that no broadcaster is put at a disadvantage by offering quality childrens' programming.*

Letter of Senator Joseph Lieberman to Chairman Reed Hundt, Oct. 23, 1995. See also, Letter of Rep. Edward Markey to Chairman Reed Hundt, Oct. 23, 1995; Letter of the Congressional Women's Caucus to Chairman Reed Hundt, Oct. 23, 1995; Letter of Rep. Michael Castle to Chairman Reed Hundt, Oct. 23, 1995.

⁵. Comments of NAB. Attachment 1: *The 1990 Children's Television Act: A Second Look on its Impact* ("NAB Study").

over four hours of programming a week - a 100% increase since 1990 when the CTA was enacted.

The report, however, is significantly flawed in two areas. First, it fails to employ a precise definition of children's television programming, thus enabling programming that has no educational or instructional value to children to inflate its figures. The report also fails to account for programming that is generally aired in the early morning hours when children are generally sleeping.

Having failed to demonstrate that commercial broadcasters have responded favorably to the CTA, NAB also fails to successfully argue its case in opposition to a revised definition of core programming and quantitative guidelines.

A. NAB's Reported Increase in Children's Programming Has Been Inflated by a Broad and Imprecise Definition of Children's Programming.

Based upon its review of license renewal applications and the comments of numerous parties in this proceeding, the Commission has tentatively concluded that its current definition of children's programming is insufficient to guide licensees regarding their CTA obligation.⁶ According to the Commission,

...many licensees do not clearly distinguish between the general audience /entertainment programs they have shown that serve children's needs and

⁶. NPRM para. 34.

the programs they have aired that were specifically designed to educate and inform children. Moreover, stations are continuing to identify general audience and entertainment programming in their license renewal applications as specifically designed to serve children's educational and informational needs.

NPRM para. 35 (footnote omitted citing "Beverly Hills 90210" as an example of programming licensees include in their CTA reports.)

NAB's comments fail to directly address the strong evidence on the record of this proceeding that broadcasters frequently misclassify entertainment programming as programming that is educational and informative.⁷

Significantly, the same definition that the Commission has now found to be inadequate is employed by NAB in its purported survey of children's educational and informational programming.⁸

As a result of this major flaw in the methodology of the study, the Office of Communication submits that NAB's findings are inflated with programming that is primarily intended for entertainment.⁹ OC/UCC completely agrees with

⁷. NAB asserts that broadcasters would be unlikely to misclassify program. However, this assertion does not overcome glaring evidence to the contrary. Comments of Dale Kunkel at 5.

⁸. According to NAB's survey methodology the following definition of educational and informational children's programming was included in the survey questionnaire distributed to broadcasters,

Programming originally produced and broadcast for an audience of children 16 years old and younger which serves their cognitive/intellectual or social/emotional needs.

NAB Study at 2.

⁹. According to a survey prepared by Dr. Dale Kunkel of the University of California there have been "absolutely no" increase in the amount of educational and informational programming

the comments of Dr. Dale Kunkel of the University of California ,

[B]roadcasters continue to make frivolous claims of educational value associated with their children's programming, and such claims artificially inflate any calculations of the amount of programming they provide.

Comments of Dr. Dale Kunkel at 6.

In the absence of an audit of the programs reported by participating licensees, the Commission should totally disregard NAB's claim that there has been a significant increase in the amount of educational and informational programming aired by commercial broadcasters. More precisely, "*[g]iven the liberal interpretation of "educational" material currently employed by the industry, it is no surprise that the NAB's research finds that stations deliver 3-4 hours of such content. The key question the Commission must ask is: 3-4 hours of what?*"¹⁰

B. Adjusted for a More Precise Definition, There has been No Change in the Amount of Children's Programming.

The survey by OC/UCC found programs such as *Teenage Mutant Turtles* aired by stations claiming that the quality and quantity of their children's programming warrants no change in the Commission's regulations.¹¹ Dr. Dale

between 1992 and 1994. Dr. Kunkel's study employed a more narrow definition of children's programming that excluded general audience programming. Comments of Dr. Dale Kunkel at 3.

¹⁰. Comments of Dr. Dale Kunkel at 4.

¹¹. Section II A, *supra*.

Kunkel found *Yogi the Bear*, *America's Funniest Home Videos* and *Biker Mice from Mars* cited by some broadcasters as part of their core educational programming.¹²

Dr. Kunkel's study, like that of NAB, compared the amount of children's programming aired by commercial licensees in 1994 with a previous year. The key difference between the two study methodologies is that Dr. Kunkel excluded general audience programming while NAB did not.¹³ Counting only regularly scheduled programs that are "specifically designed" for children, Dr. Kunkel found "absolutely no increase" in the amount of such programming in 1994 compared to 1992.¹⁴ Even then, Kunkel questioned the educational value of certain programs that were included in his study based reports contained in license renewal applications. Glaring examples such as *Woody Woodpecker*, *Yogi Bear*, and *Batman* served to make Kunkel question the reliability of broadcaster-generated reports and to state,

Overall, these data make clear that the Children's Television Act has yet

¹². Comments of Dr. Dale Kunkel at 1.

¹³. Comments of Dr. Dale Kunkel, Appendix, *Broadcasters' Response to the Children's Television Act*, ("Kunkel/Goettte Study") at 3; NAB Study at 2.

¹⁴. Comments of Dr. Dale Kunkel at 3. Kunkel's survey of 48 commercial stations reported broadcasters as providing 3.4 hours of core educational programming per week in both 1994 and 1992. Kunkel/Goette Study at 4

to stimulate significant improvements in educational programming that the Congress intended to achieve.

Kunkel/Goette Study at 8.

Kunkel's study strongly indicates that the NAB study - employing a broad definition of children's programming - should be totally disregarded. The inclusion of programming intended for general audiences clearly negates NAB's claim that there has been a significant increase in the amount of educational children's programming.¹⁵

C. NAB's Study Fails to take into Account that Broadcasters Tend to Air Programs designed to Educate and Inform at a Time when Children are Sleeping.

A survey by the Office of Communication found that 20 percent of the programming that can be truly classified as educational and informative is aired before 7:00 am. when children are likely to be sleeping (Section II, B *supra*). This finding contradicts NAB's assertion that four-fifths (81.4%) of children's programming is aired after the 7:00 am starting time.¹⁶ The discrepancy between the two surveys can be explained by the NAB's failure to distinguish between general audience/entertainment programs and programs that are specifically

¹⁵. The Office of Communication questions NAB's use of the term "educational and informational programming" throughout its comments when a substantial portion of the programs included in its study had little if any educational or information value.

¹⁶. NAB Study at 11.

designed to educate and inform.¹⁷

OC/UCC employed a survey that evaluated programs from the standpoint of their educational and informational value. Based upon survey results, OC/UCC stands by its conclusion that commercial licensees tend to air significant amounts programming that live up to acceptable standards for children to an empty audience.

IV. A Precise Definition of Children's Programming is Needed to Prevent Abuse of Discretion.

It is evident from the record of this proceeding that a more precise definition of educational and informational programming is required in order for the nation's commercial broadcasters to comply with the intended purpose of the CTA. In both of its studies in 1992 and 1994, professionals of the industry's leading trade association - NAB - demonstrated that the controversy about the meaning of the term "children's television" still permits shows such as *Woody Wood Pecker* and *Yogi the Bear* to be counted by broadcasters as fulfilling the intent of the CTA (Section III A, supra).

The inability of NAB to ascertain accurately whether broadcasters have favorably responded to the CTA belies its assertion that "the current definition

¹⁷. Section III, A, supra.